(11)

FILED
SEP 17 1941
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 625 314-674

NORTH MIAMI, A MUNICIPAL CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF FLORIDA,
Petitioner,

vs.

W. J. MEREDITH, JAMES G. MARTIN AND A. R. OHMART.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

D. H. REDFEARN,
Counsel for Petitioner.

R. H. FERRELL,
Of Counsel.

INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Introductory statement	1
Opinions below	1
Jurisdiction	2
Questions presented	2
Statutes involved	2
Statement of the case	3
Specifications of errors to be urged	7
Reasons why the writ should be granted	8
Brief in support of petition for writ of certiorari	10
Preliminary statement	10
Summary of argument	10
Argument and the law	12
I. The Circuit Court of Appeals' interpretation and application of the judgment of ouster entered by the Circuit Court of Dade County, Florida, in *State ex rel. Landis et al.* v. *Mahood*, is wholly unwarranted	12
II. The Circuit Court of Appeals holding that there is a municipal corporation de facto as to lands west of Biscayne Bay is contrary to applicable local decisions	14
III. The Circuit Court of Appeals holding that there is a municipal corporation de facto as to lands west of Biscayne Bay is based on obiter dicta in conflict with adjudicated legal principles and inapplicable to the issue involved	19
Conclusion	23
Appendix	24

Table of Cases.

	Page
Block v. *Board of County Commissioners*, 99 U. S. 686	13
Carroll v *Carroll*, 16 How. (U. S. 275)	20, 21
City of Winter Haven v. *A. M. Klemm & Son*, 132 Fla. 334	22
Douglas v. *Pike County*, 101 U. S. 679	22
Erie Railroad Co. v. *Tompkins*, 304 U. S. 64	10, 20
Fidelity Union Trust Co. v. *Field*, 311 U. S. 169	10
Gelpcke v. *Dubuque*, 1 Wall. (U. S.) 175	22
Hawkes v. *Hamill*, 288 U. S. 52, 58-59	21
Heyward v. *Hall*, 144 Fla. 377	17
Horigan v. *Heyward*, 98 F. (2d) 433, 435	20
Leatherman et al. v. *Alta Cliff Company, et al.*, 114 Fla. 305	14
Loeb v. *Trustees, Columbia Twp.*, 179 U. S. 472, 492	22
Louisville Trust Co. v. *National Bank*, 3 Fed. Supp. 909	21
Mahood v. *State ex rel. Davis, Attorney General*, 101 Fla. 1254	5, 14
Moore v. *Illinois Central R. Co.*, 311 U. S. 643	10, 19
Nalle v. *Oyster*, 230 U. S. 165, 181	13, 16
Ocean Beach Heights, Inc., v. *Brown-Crummer Investment Company*, 302 U. S. 614	3, 5, 12, 15
Ocean Beach Heights, Inc., v. *Brown-Crummer Investment Company* (Mem.), 303 U. S. 666	16
Ocean Beach Heights, Inc., v. *Brown-Crummer Investment Company*, 87 F. (2d) 978	15
Parker Bros. v. *Fagan*, 68 F. (2d) 616	21
People ex rel. Chilcoat v. *Harrison*, 253 Ill. 625	13
Six Companies v. *Highway Dist.*, 311 U. S. 180	10
Town of Enterprise v. *State*, 29 Fla. 128	7
Town of North Miami v. *Travis Co.*, 118 Fla. 879	22
West v. *American T. & T. Co.*, 311 U. S. 223	10, 19
Wichita Royalty Co. v. *City National Bank*, 306 U. S. 103	10, 19
Wiggins Ferry Company v. *Ohio and Mississippi Ry. Co.*, 142 U. S. 396	13
Yoder v. *Nu-Enamel Corp.*, 117 F. (2d) 488, 489	21
Zane v. *Hamilton County*, 189 U. S. 370	22

STATUTES.

	Page
Sections 1825 through 1828 of the Revised General Statutes of Florida, 1920	24
(1901)	26
Section 3011, Compiled General Laws of Florida	
Chapter 13103, Laws of Florida, Sp. Acts 1927	21, 25
Chapter 14237, Laws of Florida, Sp. Acts 1929	21, 25

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 625

NORTH MIAMI, A MUNICIPAL CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF FLORIDA,
Petitioner,

vs.

W. J. MEREDITH, JAMES G. MARTIN AND A. R. OHMART.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered in the above entitled cause on June 23, 1941, affirming the judgment of the District Court of the United States for the Southern District of Florida.

Opinions Below.

The final judgment of the District Court (R. 66) is unreported. The opinion of the United States Circuit Court of Appeals is reported in 121 F. (2d) 279 (R. 137).

Jurisdiction.

The judgment of the United States Circuit Court of Appeals sought to be reviewed was entered on June 23, 1941 (R. 141). The jurisdiction of this Court is invoked under Section 240 (a) of Judicial Code as amended by the Act of February 13, 1925.

Question Presented.

Where an original attempt, in 1926, to organize under Florida statutes a municipal corporation embracing two non-contiguous tracts of land, by the registered voters residing in Tract A (assessed value $1,007,026.00) and the registered voters residing in Tract B (assessed value $1,050,137.00), in 1931, is held unauthorized and void in *quo warranto* proceedings instituted by the Attorney General of Florida, with property owners of Tract B as co-relators, based on controlling legal principles established by an 1892 decision of the Supreme Court of Florida; and where it is further held that Tract B is not liable for the payment of any part of bonds, aggregating more than $300,000.00, dated 1927, 1928 and 1929, issued by said purported municipal corporation, on the ground that, at least so far as Tract B was concerned, there was no municipal corporation *de jure* or *de facto;* is now Tract A liable for the payment of all of said bond issues on the ground that under said originaf attempt to incorporate by the registered voters residing both in Tracts A and B, Tract A is a *de jure* or *de facto* municipal corporation?

Statutes Involved.

The statutes involved are set out in the Appendix, pages 24-26.

Statement.

On August 31, 1940, W. J. Meredith, James G. Martin and A. R. Ohmart,[1] citizens of the State of Kansas, assignees of three common law judgments (R. 33, 35, 37; Plaintiffs' Exhibits #1, #2 and #3) obtained by Brown-Crummer Investment Company and H. T. East in 1931, 1936 and 1937 (R. 7, 9, 10; Plaintiff's Exhibits A, B and C) upon certain bonds and interest coupons issued January 1, 1927, April 1, 1927, March 1, 1928, and April 1, 1929 (R. 111-115, 122-133; Plaintiff's Exhibits A, B, C, D, F, H, I and J), instituted these proceedings in the District Court of the United States for the Southern District of Florida (R. 1) to compel petitioner, an alleged municipal corporation organized and existing under the laws of the State of Florida, to levy "a special tax upon the 1940 tax roll of defendant, for the payment of said judgments now held by plaintiffs, upon all taxable property which was included within the territorial boundaries of said defendant as constituted at the time of the issuance of the bonds and interest coupons upon which said judgments were based, including homesteads" (R. 6), except lands in the east side of Biscayne Bay relieved of liability for their payment by the decision of this Court in *Ocean Beach Heights Inc.* v. *Brown-Crummer Investment Company,* 302 U. S. 614 (R. 68).

As a defense petitioner, in its answer, denied that North Miami was a municipality organized and existing under and by virtue of the laws of the State of Florida (R. 12), pleading the judgment of ouster entered by the Circuit Court of Dade County, Florida, on December 18, 1931 (R. 28, Defendant's Exhibit B), in *quo warranto* proceedings against the Town of North Miami by the State of Florida, through

[1] For convenience, W. J. Meredith, James G. Martin and A. R. Ohmart will be referred to interchangeably as "respondents".

its Attorney General, joined by co-relators, wherein the information (R. 19, Defendant's Exhibit A) charged that its attempted incorporation in 1926, by the inhabitants of the territory involved,[2] under Sections 1825 to 1828 of the Revised Statutes of Florida, now paragraph 2935 Compiled General Laws 1927 (Appendix, pp. 24-25) was void; that said Town had never been organized according to law and was without legal existence; and that the Town and its officers "for the space of two years and more last past usurped and

---

[2] The information in *quo warranto* did allege "there are not more than ten registered voters living on the territory hereinabove described, although in the community of Miami Shores there are approximately three hundred voters; that at the time of the attempted incorporation, the registered voters participating in the election and attempted incorporation were all residents of the community of Miami Shores, which is comprised of territory solely west of Biscayne Bay and not a part of the territory hereinabove first described" (R. 25). However, the fact that the original incorporation was participated in by registered voters of both the east side and the west side of Biscayne Bay is clearly established in the record in the case of *Ocean Beach Heights, Inc.* v. *Brown-Crummer Investment Company,* Supreme Court of the United States, October Term, 1937, No. 10 (R. 92-98, 99-102, Relators' Exhibit A), where the notice of the organization meeting is set forth stating "There will be an assembling and meeting of all citizens who are registered voters residing within the following described boundaries * * *" (including lands on the east and west side of Biscayne Bay); and in the same record and in the same Exhibit A, on page 97 thereof, one Paul Prigg (a resident of the east side) was elected one of the aldermen; and further, in the same record on page 310, the answer of the Town of North Miami "denied that at the time of incorporation of said town the registered voters participating in the election and incorporation resided in the territory west of Biscayne Bay," and petition for rehearing (p. 9, No. 10, October Term 1937), of Brown-Crummer Investment Company stated: "* * * the fact disclosed in this record that this was a good faith attempt by the tax payers and inhabitants of both sides of the bay to organize a municipality under a statute presumed sufficient to authorize the inclusion of lands and navigable waters lying between and not adjudged insufficient until after the bonds were issued". (For taking judicial notice of record see *DeBean* v. *Safe Deposit and Trust Co. etc.,* 233 U. S. 24, 32). See also allegations in case of *Heyward* v. *Hall,* 144 Fla. 90, where bill alleged: "A group of individuals residing in a hamlet located in the following territory which lies on the west side of Biscayne Bay, together with other individuals residing in the following territory located on the east side of Biscayne Bay, attempted to incorporate a municipal corporation". (For taking judicial notice see *Hanley* v. *Donahue,* 116 U. S. 1, 6.)

do usurp to be a municipal corporation" * * * "to the prejudice and wrong of the people of Florida" (R. 20-21), for that the original attempt at incorporation consisted of an effort to organize under one government two detached tracts of land, one on the east side and the other on the west side of Biscayne Bay, Dade County, Florida (R. 24). By the prayer of said information the pretended municipal corporation and its governmental officers were required "to answer to the state by what warrant or authority of law they claimed to exercise the offices, franchises, liberties and powers" of such a municipal corporation (R.27). Upon the trial of said cause the jury had rendered a verdict in favor of the State and the co-relators and against the respondents (R. 29), and by the final judgment entered thereon, the Town of North Miami and the officers thereof had been "ousted, excluded and prohibited from exercising the offices, franchises, and privileges of a municipality or municipal corporation" (R. 29), and further, the town's officers had also been ousted, excluded, and prohibited from exercising such offices, franchises, and privileges over the lands of the co-relators which were east of Biscayne Bay, (R. 29; Defendant's Exhibit A).

The plea of said judgment of ouster entered by said Circuit Court of Dade County, rendered pursuant to the opinion of the Supreme Court of Florida in the case of *Mahood* v. *State ex rel. Davis, Attorney General,* 101 Fla. 1254, which was the foundation for the opinion of the Supreme Court of Florida in *Leatherman et al.* v. *Alta Cliff Company et al.,* 114 Fla. 305, and the basis for the decision of the Supreme Court of the United States in *Ocean Beach Heights, Inc.* v. *Brown-Crummer Investment Company,* 302 U. S. 614, was made in order to show that said pretended town and its officers had been ousted, excluded, and prohibited from exercising the offices, franchises, and privileges

of a municipal corporation and had no authority to levy and collect the taxes asked in respondents' complaint.

Petitioner, further answering, pled that the lands of co-relators on the east side of Biscayne Bay excluded by the said judgment of ouster and relieved of all taxation by the pretended municipality in *Ocean Beach Heights, Inc.* v. *Brown-Crummer Investment Company, supra,* constituted three-fourths of the taxable values of the property within the original boundaries of said pretended municipality and that in reliance upon the same being available for assessment and taxation the inhabitants of the territory originally included in said pretended town, upon its said incorporation, voted bonds in the aggregate amount of $302,028.65; that should the remaining territory lying west of Biscayne Bay with only one-fourth of the taxable property, according to 1936 tax rolls, originally included in said pretended municipality, be now adjudged a municipality legally incorporated and be compelled to pay all of said bonded indebtedness, an inequitable and unjust burden would be cast upon the landowners on said west side and it would be impossible for said town to function as a municipal corporation (R. 17-18).

By way of an amendment to its answer, petitioner sought to establish that should the remaining territory lying west of Biscayne Bay be now adjudged a municipality legally incorporated and be compelled to pay all of a general improvement bond issue dated January 1, 1927, amounting to $175,000.00, such would be in excess of ten per centum of the assessed value of real and personal property on the west side of Biscayne Bay at the time said general improvement bonds were issued ($1,007,026.00) contrary to the express provisions of the statute authorizing the issuance of general improvement bonds by municipal corporations, Section 3011, Compiled General Laws, 1927, Appendix, p. 26 (R. 58-64).

On the complaint so filed (R. 1) the said answer of North Miami (R. 12), motion of the Town of North Miami for leave to amend answer and the amendment to its answer attached thereto (R. 57), request for admission (R. 31) and motion for summary judgment (R. 40), said District Court, on the 18th day of November, 1940, holding that none of the matters pleaded or proferred by the amendment constituted a defense, entered final judgment requiring the officers of said town to levy and collect taxes sufficient to pay all of said judgments (R. 66).

On appeal from the District Court's decision, the Circuit Court of Appeals affirmed the judgment of the District Court (R. 141), rejecting the petitioner's contentions that there was no *de jure* or *de facto* municipal corporation including lands lying west of Biscayne Bay, refusing to apply properly applicable local decisions, and substituting therefor its own interpretation of said decisions supported by *obiter dicta* inconsistent with applicable adjudicated principles of local law and without legal foundation whatsoever.

Specifications of Errors to be Urged.

1. The Circuit Court of Appeals erred in holding that petitioner's non existence *de jure* and *de facto* was not established by the judgment of ouster entered by the Circuit Court of Dade County, Florida, on December 18, 1931, rendered pursuant to *Mahood* v. *State ex rel. Davis, supra,* and *Town of Enterprise* v. *State,* 29 Fla. 128.

2. The Circuit Court of Appeals erred in holding that petitioner's non-~~existent~~ existence *de jure* and *de facto* was not adjudged by the Supreme Court of Florida in *Leatherman et al.* v. *Alta Cliff Company, supra,* and by the Supreme Court of the United States in *Ocean Beach Heights, Inc.* v. *Brown-Crummer Investment Company, supra.*

3. The Circuit Court of Appeals erred in holding that petitioner was liable for all bonds issued in 1927, 1928 and 1929 as a *de facto* municipal corporation contrary to well settled legal principles established by the Supreme Court of Florida in *Town of Enterprise* v. *State, supra*; *Mahood* v. *State ex rel. Davis, supra*; *Leatherman et al.* v. *Alta Cliff Company, supra;* and by the Supreme Court of the United States in *Ocean Beach Heights, Inc.* v. *Brown-Crummer Investment Company, supra.*

4. The Circuit Court of Appeals erred in holding that petitioner was liable for all bonds issued in 1927, 1928 and 1929 as a *de facto* municipal corporation on the principle of judicial and legislative recognition and the exercising of municipal functions.

5. The Circuit Court of Appeals erred in holding that petitioner was liable for a $175,000 general improvement bond issue of January 1, 1927, as a *de facto* municipal corporation, inasmuch as the amount of said bond issue is in excess of ten per centum of the assessed value of real and personal property within the boundaries of said *de facto* municipal corporation contrary to the express provisions of the Florida statute authorizing the issuance of general improvement bonds by municipal corporations.

6. The Circuit Court of Appeals erred in affirming the judgment of the District Court.

Reasons Why the Writ Should be Granted.

The Circuit Court of Appeals has decided an important question of local law in a way probably in conflict with applicable local decisions, and in conflict with a decision of this Court in a controversy between the same parties or their privies construing the same principle of law.

Wherefore, petitioner respectfully prays that a writ of certiorari issue to the Circuit Court of Appeals for the Fifth Circuit.

D. H. REDFEARN,
Counsel for Petitioner.

Of Counsel:
R. H. FERRELL,
REDFEARN & FERRELL,
1206 duPont Building,
Miami, Florida.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Preliminary Statement.

Petitioner submits that the Circuit Court of Appeals has failed to apply properly applicable local decisions within the requirements of Section 34 of the Judiciary Act of 1789, 28 U. S. C. A., Section 725, as enunciated by the Supreme Court of the United States in *Erie Railroad Co. v. Tompkins*, 304 U. S. 64, and further explained in *Wichita Royalty Co.* v. *City National Bank*, 306 U. S. 103; *West* v. *American T. & T. Co.*, 311 U. S. 223; *Fidelity Union Trust Co.* v. *Field*, 311 U. S. 169; *Six Companies* v. *Highway Distrist*, 311 U. S. 180; *Moore* v. *Illinois Central R. Co.*, 311 U. S. 643. It does not appear affirmatively on the face of the opinion below (R. 137) that the Circuit Court of Appeals refused to apply applicable local decisions and substituted its own interpretation of said decisions based on *obiter dicta*. However, this fact is not important if a proper analysis of this opinion shows that such was actually done. See: *Wichita Royalty Co.* v. *City National Bank, supra, Six Companies* v. *Highway District, supra.*

Summary of Argument.

I. The Circuit Court of Appeals' interpretation and application of the judgment of ouster entered by the Circuit Court of Dade County, Florida, in *State ex rel. Landis et al.* v. *Mahood* is wholly unwarranted. An analysis of the information and judgment in that case clearly indicates that it was not only held that the officers of the pretended town were ousted from exercising powers over lands east of the Biscayne Bay but that they were also ousted from exercising the offices and franchises of a municipality over lands west of Biscayne Bay.

II. The Circuit Court of Appeals, holding that there is a municipal corporation *de facto* as to lands west of Biscayne Bay is contrary to applicable local decisions. It is well established law in Florida that an original attempt to incorporate under one municipal government two non-contiguous tracts of land is unauthorized and void. Here was such an attempt and the same is void *ab initio* as to all lands included in the original attempt to incorporate—lands on the east and the west sides of Biscayne Bay.

III. The Circuit Court of Appeals, holding that there is a municipal corporation *de facto* as to the lands west of Biscayne Bay is based on *obiter dicta* in conflict with adjudicated legal principles and inapplicable to the issue involved. Although Florida decisions hold that there can be no municipality *de facto* where there can be none *de jure* and that an original attempt to incorporate under one government two non-contiguous tracts of land is unauthorized and void, there is *obiter dicta* to the effect that because of judicial and legislative recognition and the exercising of municipal functions, petitioner is a *de facto* municipal corporation as to lands west of Biscayne Bay. This *dicta* was originally advanced in a decision of the Circuit Court of Appeals and later repeated by the Supreme Court of Florida. It is urged that such *dicta* should not be the basis of decision of the Federal Court in the instant case because such is wholly unreliable. Furthermore, such *dicta*, even if binding on a Federal Court, is inapplicable in the instant case for the net result is an absurdity, namely, the establishment of a *de facto* municipal corporation by legislative and judicial recognition and the exercising of municipal functions is given retroactive effect—validating bonds issued prior to such legislative and judicial recognition and the exercising of municipal functions as would give rise to a *de facto* municipality.

ARGUMENT.

I. The Circuit Court of Appeals' interpretation and application of the judgment of ouster entered by the Circuit Court of Dade County, Florida, in State ex rel. Landis et al. v. Mahood, is wholly unwarranted.

The Circuit Court of Appeals by holding that the judgment of ouster of the Circuit Court of Dade County, Florida, in *State ex rel. Landis et al.* v. *Mahood et al.* (R. 28; Defendant's Exhibit B), which was construed by this Court in *Ocean Beach Heights, Inc.* v. *Brown-Crummer Investment Company,* 302 U. S. 614, "did not purport to nullify the municipality or oust its officers wholly, but only as to the part of the town east of the Bay" (R. 139), gives the judgment a construction which is in conflict with the language used.

The *jurisdictional fact set up in the information* in *quo warranto* (R. 19; Defendant's Exhibit A), upon which the State of Florida sought to require the Town of North Miami (formerly Miami Shores) "a pretended municipal corporation, to answer to said State by what warrant or authority of law" it was usurping to be a municipal corporation and was exercising the offices, franchises, liberties, and powers of a municipality (R. 27), and the one upon which the Circuit Court of Dade County, Florida, predicated its judgment *was that the alleged incorporation consisted of an effort to incorporate two distinct detached tracts of land, as corporate territory, under one government,* one on the east side and the other on the west side of Biscayne Bay (R. 24).

The Town by its answer denied these allegations. Upon the issue thus formed the jury found for the relator and corelator and the judgment entered thereon did two things:

First: It adjudged that the officers of the Town of North Miami and the Town of North Miami "be and they

each are hereby ousted, excluded and prohibited from exercising the offices, franchises and privileges of a municipality or municipal corporation" (R. 29); and

Second: To meet the requirements and needs of co-relators who were landowners on the east side, the judgment then ousted and excluded the mayor, councilmen, tax collector, clerk and town marshal from exercising the offices and franchises of a municipality over and upon the lands east of Biscayne Bay (R. 29-30).

Therefore, the language of the information and the judgment based thereon shows that said judgment did purport to do more than to oust the officers from exercising the offices and franchises of a municipality east of the bay. The jurisdictional fact alleged in the *quo warranto* proceedings was not such a fact as permitted or laid the foundation for a partial ouster. Under the facts alleged and proven, a complete ouster was not only proper but it was the only judgment by which the lands on the east side could be excluded.

In all litigation between the same parties or their privies, the estoppel extends, not only to what was decided, but to all that was necessarily involved in the issue or essential to the decision made. *Wiggins Ferry Company* v. *Ohio and Mississippi Ry. Co.*, 142 U. S. 396, *Nalle* v. *Oyster*, 230 U. S. 165, 181, *Block* v. *Board of County Commissioners*, 99 U. S. 686.

In addition, the fact that the *quo warranto* proceeding was a direct proceeding instituted in the name of the State of Florida by its Attorney General, Meredith, and the other respondents here, as well as the entire public, are regarded as being represented and are bound by the judgment rendered.

People ex rel. Chilcoat v. *Harrison*, 253 Ill. 625.

Therefore, the Circuit Court of Appeals in the instant case should have held that the said judgment of ouster

conclusively determined the rights of the parties in this proceeding, and the motion for summary judgment should have been denied.

II. The Circuit Court of Appeals' holding that there is a municipal corporation de facto as to lands west of Biscayne Bay is contrary to applicable local decisions.

In *Enterprise* v. *State,* 29 Fla. 128, the Supreme Court of Florida held that the Constitution and the Statutes of Florida, under which the attempt in 1926 to incorporate the Town of North Miami was made, did not permit the incorporation of disconnected tracts of land under one government, found a part of the territory proposed to be incorporated to be disconnected from the other part where the village was located, just as in the present case, and declared (p. 145):

> "An attempt to incorporate two distinct detached tracts of land as corporate territory under one government, is unauthorized and void."

In *Mahood* v. *State ex rel. Davis,* 101 Fla. 1254, the Supreme Court of Florida examined the information in *quo warranto* challenging the legal existence of the Town of North Miami, and remanded the case for trial of the issue whether the purported town actually included two detached tracts of land, declaring, on the basis of *Enterprise* v. *State, supra,* that under the Statutes of Florida there could be no municipal government embracing two detached tracts of land.

In *Leatherman et al.* v. *Alta Cliff Company, et al.,* 114 Fla. 305, a case instituted by landowners on the east side of Biscayne Bay, the Supreme Court of Florida held that the statutes did not authorize citizens within a village to create a municipality embracing the village and including territory not connected with the village, applied the judg-

ment of ouster (R. 29) rendered pursuant to *Mahood* v. *State ex rel. Davis, supra,* and held that tax certificates issued by said municipality against lands on the east side of Biscayne Bay were null and void.

In *Ocean Beach Heights, Inc., et al.* v. *Brown-Crummer Investment Company, et al.,* 87 Fed. (2d) 978, the Circuit Court of Appeals for the Fifth Circuit affirmed a judgment of the United States District Court enjoining the *Leatherman* case, *supra,* from being applied to taxes levied against east side lands for the purpose of paying one of the judgments involved in the present proceeding, dated June 19, 1931, recovered on certain general improvement bonds issued by said pretended municipality at the time of its alleged organization, on the ground that the town *de facto* included the lands east of Biscayne Bay.

Upon certiorari to the Supreme Court of the United States, the judgment of the Circuit Court of Appeals was reversed in *Ocean Beach Heights, Inc.* v. *Brown-Crummer Investment Company* case, 302 U. S. 614, 619, and it was held, under the authority of *Town of Enterprise* v. *State, supra,* that " 'an attempt to incorporate two distinct detached tracts of land under one government is unauthorized and void * * *' " and that the lands east of Biscayne Bay were not subject to taxes for the payment of bonds issued by the Town of North Miami, on the ground that "in the absence of a law authorizing the creation of a municipality *de jure,* there can be none *de facto*".

The Circuit Court of Appeals in the present case held that this Court in the *Ocean Beach Heights, Inc.* case, *supra,* did no more than "adjudge that the east side property was never lawfully included in the town and could not be taxed by it" (R. 139). This was error because this Court, in order to reverse the Circuit Court of Appeals and deny the relief sought by the bondholders, had first to determine the status of the municipality. It found from the

proof that the original attempt to incorporate the Town of North Miami was an effort to incorporate two distinct detached tracts of land under one government, one tract on each side of Biscayne Bay. It then held that such an attempt under the statutes construed by the Supreme Court of Florida in *Town of Enterprise* v. *State, supra*, and *Leatherman* v. *Alta Cliff Company, supra*, was unathorized and void. Having found that there was no law authorizing the creation of the Town of North Miami *de jure*, it followed, and this Court so held, that under applicable Florida decisions there could be no town *de facto*. While the relief thereby granted, or denied, concerned only one of the two non-contiguous tracts, the relief sought by the bondholders necessarily compelled an adjudication of the non-validity of the municipal organization as a whole. An adjudication that as to the lands east of Biscayne Bay there was no municipality *de facto* for the want of a law authorizing the creation of a municipality *de jure*, was an adjudication that the other non-contiguous tract on the west side of Biscayne Bay was not a municipality *de facto*. The established rule is that if the former action be the same as the present, then every matter of fact and of law that was necessarily involved in the consideration of the former issue should be conclusive upon the present. *Nalle* v. *Oyster*, 230 U. S. 165.

That this is a logical deduction from the opinion of this Court in the *Ocean Beach Heights* case, *supra*, is borne out by the petition of the Brown-Crummer Investment Company for a rehearing which this Court denied. *Ocean Beach Heights, Inc.* v. *Brown-Crummer Investment Company* (Mem.), 303 U. S. 666. In that petition it was urged:

> "* * * If, as this Court now holds, the two tracts of land separated by the bay were 'detached tracts' within the meaning of the statute, *Enterprise* v. *State* would have necessitated the further conclusion that the attempted incorporation was 'unathorized and void'

and 'no municipal government came into existence or operation' * * *'' (Petition for rehearing, Supreme Court of the United States, October term 1937, No. 10, page 2).

"* * * For, as held in *Enterprise* v. *State*, incorporation under such circumstances was void, the municipality never came into existence and both tracts were similarly affected." (*Ibid*, page 3.)

In *Heyward* v. *Hall*, 144 Fla. 377, certain owners of land west of Biscayne Bay asked for an injunction against the levy of municipal taxes on their property by the Town of North Miami, alleging that there was no municipality in legal existence *de jure* or *de facto*, "because the general statute under which the alleged incorporation was attemped * * * is unconstitutional and void, and because the proceedings to incorporate the non-contiguous tracts of land, entirely separated by Biscayne Bay, was unathorized by the general statute and void". The judgment of ouster was not pled. From a decree in favor of the plaintiffs an appeal was taken to the Supreme Court of Florida, which reversed the lower court, directing that the bill of complaint be *dismissed* on the ground that under these allegations the proper remedy, if any, was *quo warranto*. Although the pleadings, the issue presented, and the holding of the Supreme Court were in no way dependent upon the interpretation of the *Enterprise, Mahood, Leatherman* and *Ocean Beach Heights* cases, *supra*, the Florida court gave its views on the scope of said cases. This *obiter dicta* on its face does lend color to the conclusion of the Circuit Court of Appeals in the instant case. However, it is submitted that when such *dicta* is properly analyzed, it is clear that the Florida court was considering those cases from the standpoint of the problem then presented, which is wholly unlike the issue here involved, and that such explanation in no way impairs the holdings and the legal

principles discussed therein as they apply to the instant case. In any event, such *dicta* should not be followed by the federal courts for the reasons advanced below. (See heading III).

The conclusion reached by the Circuit Court of Appeals in the instant case would have been proper *if the lands on the east side had been sought to be included within the boundaries of a municipality already existing on the west side. But this was not the case.* The original venture by which the inhabitants or registered voters of the east and west sides of Biscayne Bay attempted to incorporate the town was joint and mutual. When the basis of the decision of this Court was that the very attempt to incorporate was void, the decision is as applicable to the west side as to the east side tract. Otherwise, undue preference is granted to whichever side is involved in the first proceedings to invalidate the original attempt to incorporate, and an unjustifiable burden imposed on the other side which defers action.

The Circuit Court of Appeals' holding that there is a *de facto* municipality on the west side requires the substitution of: (1) A different set of voters participating; and (2) different boundaries, than those actually involved in the original attempt to incorporate.

If it be conceded for the sake of argument that the registered voters on the west tract could have organized a *de jure* municipality as to the west tract and a *de facto* municipality, at least, as to the west tract (which is impossible under the *Town of Enterprise* case) if they by themselves had reached out and attempted to include the east tract within the town, *neither could have been done jointly with the registered voters of the east tract.* It is submitted that the Court can not and should not *now* substitute different parties with different motives for the purpose of upholding the bond issues in question.

If the original attempt at incorporation was void *ab initio* as to the lands east of the bay, it necessarily was void *ab initio* as to the lands west of the bay. An attempt which is void is void in whole, not merely in part. This is established by the following syllogism:

> An original attempt to incorporate two distinct detached tracts of land as corporate territory, under one government, is unauthorized and void;
>
> The original effort to incorporate the Town of North Miami consisted of an attempt to incorporate two distinct detached tracts of land as corporate territory under one government;
>
> Therefore, the original attempt to incorporate the Town of North Miami was void.

It follows then that the holding of the Circuit Court of Appeals in the present case is in direct conflict with the law adjudicated by the Supreme Court of Florida and this Court in a case between the same parties and their privies upon the same issues and involving the same principle of law and that such law, not having been really impaired by subsequent Florida decisions, is now conclusive as to the issues raised in this case. See:

Wichita Royalty Co. v. *City National Bank*, 306 U. S. 103;

West v. *American T. & T. Co.*, 311 U. S. 223;

Moore v. *Illinois Central R. Co.*, 311 U. S. 643.

III. The Circuit Court of Appeals holding that there is a municipal corporation de facto as to lands west of Biscayne Bay is based on Obiter Dicta in conflict with adjudicated legal principles and inapplicable to the issue involved.

In its opinion, the Circuit Court of Appeals stated:

> "• • • The municipality west of the Bay has continued to function ever since, and has repeatedly been recognized by the legislature and the courts as an existing municipality. • • •" (R. 139).

This idea was first announced by the Circuit Court of Appeals in *Horigan* v. *Heyward*, 98 F. (2d) 433, 435, and later repeated by the Supreme Court of Florida in *Heyward* v. *Hall, supra.*

A brief analysis shows that in both cases, *supra*, this is mere *obiter dicta* and should not be controlling or persuasive in the instant case.

In *Horigan* v. *Heyward, supra,* there was motion to quash a writ of mandamus brought by a bondholder on a judgment against the purported Town of North Maimi, the sustaining of which by the lower court was predicated upon its taking judicial notice of the *Town of Enterprise* case and the *Ocean Beach Heights, Inc.*, case, *supra.* There the judgment of ouster was not pled and the Circuit Court of Appeals reversed the lower court on the ground that the town and its officers, not having denied the existence of the town, it was without authority to go outside the issues presented by the record to inquire whether the town had a lawful existence. In other words, the issue whether there was a valid municipality was not presented to the Court by the matter before it. It follows, therefore, that the ensuing discussion of the town's *de jure* or *de facto* existence is mere *obiter dicta.*

In *Heyward* v. *Hall, supra,* the Supreme Court of Florida's discussion of the *de facto* existence of the town on the basis of legislative and judicial recognition and the exercising of municipal functions was *obiter dicta* for reasons similar to those given above in connection with the Court's discussion of the scope of previous decisions. The Court said: "Plaintiffs cannot in this proceeding challenge the legal existence of the municipality whether it be a *de jure* or *de facto* municipality."

It is submitted that under the implications of *Erie Railroad Co.* v. *Tompkins,* 304 U. S. 64, Federal courts are not bound to accept local *obiter dicta* (*Carroll* v. *Carroll,* 16 How.

(U. S.) 275), especially when such *dicta* is in conflict with applicable adjudicated principles of local law. See *Parker Bros.* v. *Fagan*, 68 F. (2d) 616, (cert. denied, 292 U. S. 638); *Louisville Trust Co.* v. *National Bank*, 3 Fed. Supp. 909, reversed on grounds in 67 F. (2d) 97, (cert. denied, 291 U. S. 665). If local *dicta* is ever persuasive data to be regarded by the Federal court in dealing with local matters of common law or statute, such should be confined to "considered *dicta*". See: *Hawkes* v. *Hamill*, 288 U. S. 52, 58-59. Even then, if such considered *dicta* is in conflict with applicable adjudicated principles of local law, such should be received with extreme caution. See: *Yoder* v. *Nu-Enamel Corp.*, 117 F. (2d) 488, 489.

However, assuming that it is the law in Florida that a *de facto* municipality may be established by legislative and judicial recognition and the exercising of municipal functions, is it applicable in the instant case? The bonds here involved were issued in 1927, 1928 and 1929.

Was Chapter 13103, Laws of Florida, Sp. Acts 1927, enacted subsequent to the issue of $175,000 general improvement bonds, changing the name of the Town of Miami Shores to Town of North Miami, effective upon ratification by a majority vote of the qualified electors voting at an election, sufficient legislative recognition to operate retroactively and establish a *de facto* municipality with power to issue bonds in violation of a statute (see appendix, p. 25) only by resorting to validation proceedings? It was certainly not sufficient as to lands then included in the municipality east of Biscayne Bay. See: *Mahood* v. *State, supra*; *Leatherman* v. *Alta Cliff Co., supra*, (appendix, p. 25).

Also, was Chapter 14237, Laws of Florida, Sp. Acts 1929, validating and confirming (effective on approval of a majority vote of qualified electors voting at a special election) the action of the Town Council of the "Town of Miami Shores" in the expenditure of funds derived from

the sale of general improvement bonds, dated January 1, 1927, where such expenditures had been for any municipal purpose, sufficient legislative recognition to establish a *de facto* municipality as to these bonds? (Appendix, p. 25).

The answer to this inquiry is found in the case of *City of Winter Haven* v. *A. M. Klemm & Son*, 132 Fla. 334, decided April 5, 1938, wherein the Supreme Court of Florida stated: "There was no statutory validation or incorporation in the North Miami case".

Is the 1935 decision of the Supreme Court of Florida in *Town of North Miami* v. *Travis Co.*, 118 Fla. 879, sustaining a motion to strike certain paragraphs in a bill of complaint which sought to enjoin the expenditure of certain municipal revenue in 1932-1933 and 1933-1934 for purposes other than the payment of bonded indebtedness, sufficient judicial recognition to establish a *de facto* municipality as to these bonds?

The discussion of the *Mahood, Leatherman, Ocean Beach Heights, Horigan* and *Heyward* cases above makes it unnecessary to labor the obvious fact that these cases do not contain judicial recognition of the existence of a *de facto* municipality as of the time the bonds were issued. So also, these cases refute the theory of creation of a *de facto* municipality by the exercising of municipal functions.

Furthermore, the power of a municipal corporation to make negotiable securities is determined by the facts and the law existing at the time the securities were issued. See:

Zane v. *Hamilton County*, 189 U. S. 370;
Gelpcke v. *Dubuque*, 1 Wall. (U. S.) 175;
Loeb v. *Trustees, Columbia Twp.*, 179 U. S. 472, 492;
Douglas v. *Pike County*, 101 U. S. 679.

The *Town of Enterprise* case decided in 1892 was the controlling law in Florida in 1926, when the attempt by the inhabitants of the entire area to incorporate detached tracts

"A" on the east side of Biscayne Bay and "B" on the west side of Biscayne Bay under one government was made. It was the law in 1927, 1928 and 1929 when the bonds in question were issued. It was still the law of Florida on January 17, 1938, when this Court decided the *Ocean Beach Heights, Inc.*, case involving the same facts, the same principle of law and between the same parties or their privies.

It must follow then that neither the legislature nor the courts nor the purported officers of the town "cured what never had life enough to be sick".

Conclusion.

For these reasons it is respectfully submitted that the Petition for Writ of Certiorari should be granted.

D. H. REDFEARN,
Counsel for the Petitioner.

Of Counsel:
R. H. FERRELL,
REDFEARN & FERRELL,
1206 duPont Building,
Miami, Florida.
September, 1941.

APPENDIX.

Sections 1825, 1826, 1827, 1828 of the Revised General Statutes of Florida, 1920, providing for the incorporation of a town by mass meeting:

"1825. Number of inhabitants necessary to incorporate.—It shall be lawful for the male inhabitants of any hamlet, village or town in this State, not less than twenty-five in number, who shall have the qualifications hereinafter prescribed to establish for themselves a municipal government with corporate powers and privileges as hereinafter provided.

"1826. Distinction between cities and towns.—Whenever any municipal government is established, and it shall appear that there are three hundred registered voters within the limits hereby to be designated, it shall be and the same is hereby incorporated and designated as a city, entitled to the privileges of a city. All municipal governments having a less number of voters than those named above shall be and the same are hereby designated and declared incorporated towns, entitled to the privileges and rights of incorporated towns.

"1827. Publication of notice to assemble and organize.—Whenever any community of persons shall desire to form a municipal corporation under the provisions of this chapter, they shall, for a period of not less than thirty days, cause to be published in some newspaper of the county, or by posting in three plaecs of public resort in the immediate vicinage, a notice *requiring all persons who are registered voters, residing in the proposed corporate limits,* which shall be stated in this notice, to assemble at a certain time and place to select officers and organize a municipal government.

"1828. Proceedings of meeting.—At the same time and place designated in the notice aforesaid, the qualified electors present, being not less than two-thirds of those whom it is proposed to incorporate, and not less than twenty-five in number, shall select a corporate name and seal for the municipality which they propose to form, and designate by definite metes and bounds the territorial limits thereof.

They shall then proceed to choose by a vote of a majority of the said electors a mayor and not more than nine and not less than five aldermen, who shall be known as the city council and in whom shall vest the government of the city. There shall also be chosen at the same time and place, and in like manner, a city clerk and a marshal. The mayor, clerk and the marshal shall continue in office for the period of one year from the date of their election, or until their successors are elected and qualified: Provided, That the metes and bounds in this section shall not in any case apply to the fixing or establishing the boundary lines of towns and cities now or heretofore incorporated by the now existing laws of this State."

LEGISLATIVE ACTS RELATING TO THE TOWN OF NORTH MIAMI

Chapter 13,103, Acts of 1927—(No. 1298).

AN ACT Changing the Name of the Town of MIAMI SHORES in Dade County, Florida, to Town of North Miami, and Providing that this Act shall take Effect upon its Ratification by the Qualified Electors of said Town.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. That the name of the Town of Miami Shores in Dade County, Florida, is hereby changed to the "Town of North Miami."

Sec. 2. That this Act shall take effect upon its ratification by a majority vote of the qualified electors of said Town actually voting at an election which shall be held after such notice and under such rules and regulations as shall be prescribed by ordinance of said Town.

Approved June 6, 1927.

Chapter 14,237, Acts of 1929—(No. 673).

AN ACT Validating and Confirming the Action of the Town Council of the Town of Miami Shores, Florida, in the Expenditure for Municipal Purposes of the Proceeds of Certain Bonds Issued and Sold by said Town and Authorizing Said Town Council to Expend the Balance of Said Proceeds on Hand for Municipal Purposes Generally.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. That the action of the Town Council of the Town of Miami Shores in the expenditure and paying out of funds derived from the sale of Bonds issued by said Town under Ordinance Number 73, passed by the Town Council November 15, 1926, said bonds dated the 1st day of January, 1927, and designated as General Improvement Bonds, be and the same is hereby ratified, validated and confirmed in all cases where such expenditures have been for any municipal purpose or purposes.

Section 2. That the said Town Council of the Town of Miami Shores be, and it is hereby, given the right and authority to pay out and expend any balance of the proceeds remaining on hand from the sale of said bonds for any valid municipal purpose of said Town, when duly authorized by proper ordinance or resolution of said Town Council.

Section 3. That this Act shall take effect upon the approval of a majority of the qualified electors of the Town of Miami Shores, Florida, voting at a Special Election called for that purpose, or at the next General Election.

Approved June 8, A. D. 1929.

SECTION 3011 Compiled General Laws of Florida (1901) Limiting amount of bonds cities and towns may issue.

"Cities and towns may issue bonds for the purpose of building or repairing public buildings or water works of the city or town, widening or extending streets or parks, purchasing or establishing gas or electric light plants for the city or town, or for any other municipal purpose, to an amount not exceeding ten per cent. of the assessed value of the real and personal property within its incorporated limits."

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. 625

NORTH MIAMI, a Municipal Corporation organized and existing under the Laws of the State of Florida,

Petitioner,

vs.

W. J. MEREDITH, JAMES G. MARTIN and A. R. OHMART,

Respondents

BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

D. C. HULL
ERSKINE W. LANDIS
FRANCIS P. WHITEHAIR
JOHN L. GRAHAM
J. COMPTON FRENCH

Counsel for Respondents

SUBJECT INDEX

Topic	Page
Opinions Below	1
Additional Statement of the Case	1
Argument	7
Summary	7
Interpretation of the Judgment of Ouster	8
The Holding is in Accord with Local Decisions	11
The Holding is Based Upon Florida Decisions, Not Upon Obiter Dicta	16
Conclusion	20
Appendix	i
Statutes Relative to Bonds of Municipalities and Taxation for their Payment	i
Statute Relating to Refunding Bonds	v
Tax Adjustment Statute for North Miami	vii
Additional Tax Adjustment Statute	viii
Statute Changing Name of North Miami	ix
Statute Changing Election Date and Fiscal Year in North Miami	x
Statute Relating to Office of Marshal in North Miami	xi
Statute Authorizing Zoning in North Miami	xii
Statute Authorizing North Miami to Abate Nuisances	xiv
Statute Authorizing Occupational Taxes in North Miami	xv
Statute Relating to Terms of Office of North Miami Officials	xvi

TABLE OF AUTHORITIES CITED

Cases	Page
Columbia County Commissioners vs. King, 13 Fla. 451	21
Enterprise, Town of, vs. State, 29 Fla. 128, 10 So. 740	7, 12, 17, 19
Erie Railroad Company vs. Tompkins, 304 U. S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188	8
Heyward vs. Hall 144 Fla. 344, 198 So. 114	5, 6, 10, 11, 14, 15, 16, 17, 18, 19, 20
Leatherman vs. Alta Cliff Co., 114 Fla. 305 153 So. 845	6, 14, 16, 17, 18
Lee vs. Atlantic Coast Line Railroad Company, 141 Fla. 545, 194 So. 252	20
Mahood vs. State ex rel. Davis, 101 Fla. 1254, 133 So. 90	4, 6, 7, 8, 9, 13, 14, 17, 18
Moore vs. Illinois Central R. Co., 311 U. S. 643, 61 Sup. Ct. 754, ... L. Ed. ....,	8, 19
North Miami, Town of, et al., vs. Travis Co., 118 Fla. 879, 160 So. 360	6, 18
Ocean Beach Heights, Inc., vs. Brown-Crummer Investment Company, et al., 302 U. S. 614, 58 Sup. Ct. 385, 82 L. Ed. 380	2, 3, 4, 6, 14, 16, 18
Richard vs. City of Fort Lauderdale, ... Fla. ...., 1 So. 2nd. 202	20
Sparks vs. Ewing, 120 Fla. 520, 163 So. 112	20
United States ex rel. Horigan vs. Heyward, 98 Fed. 2nd. 433	4

TABLE OF AUTHORITIES CITED—(Continued)

Statutes:	Page
Chapter 11,855, Laws of Florida, Acts of 1927	v
Chapter 13,103, Laws of Florida, Acts of 1927	19
Chapter 14,237, Laws of Florida, Acts of 1929	19
Chapter 15,347, Laws of Florida, Acts of 1931	19, vii
Chapter 15,822, Laws of Florida, Acts of 1931	19, viii
Chapter 15,823, Laws of Florida, Acts of 1931	19, ix
Chapter 16,584, Laws of Florida, Acts of 1933	19, x
Chapter 17,616, Laws of Florida, Acts of 1935	19, xi
Chapter 17,617, Laws of Florida, Acts of 1935	19, xii
Chapter 17,618, Laws of Florida, Acts of 1935	19, xiv
Chapter 18,728, Laws of Florida, Acts of 1937	19, xv
Chapter 21,426, Laws of Florida, Acts of 1941	19, xvi
Compiled General Laws of Florida, 1927, Section 3001	i
Compiled General Laws of Florida, 1927, Section 3009	i
Compiled General Laws of Florida, 1927, Section 3010	ii
Compiled General Laws of Florida, 1927, Section 3011	ii
Compiled General Laws of Florida, 1927, Section 3013	ii
Compiled General Laws of Florida, 1927, Section 3032	iii
Compiled General Laws of Florida, 1927, Section 3033	iii

IN THE

Supreme Court of the United States

No. 625

OCTOBER TERM, 1941

NORTH MIAMI, a Municipal Corporation organized and existing under the Laws of the State of Florida,
Petitioner,

vs.

W. J. MEREDITH, JAMES G. MARTIN and A. R. OHMART,
Respondents.

BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The final judgment of the District Court is unreported, but it appears at page 66 of the record. The opinion of the United States Circuit Court of Appeals is reported in 121 Federal (2nd.) 279. It appears at page 137 of the record.

ADDITIONAL STATEMENT OF THE CASE

The petitioner, in preparing the statement of the case and in formulating the theory of the case for this Court, has omitted several important features which are necessary to a clear understanding of the case.

Such omitted matter so effectively exploded the petitioner's claim of its own non-existence, in the courts below, that the petitioner now finds it necessary to discard as mere "obiter dicta" the opinions and decisions of the State and Federal courts involving the Town of North Miami.

In the case of **Ocean Beach Heights, Inc., vs. Brown-Crummer Investment Company, et al., 302 U. S. 614, 58 Sup. Ct. 385, 82 L. Ed. 380,** in January, 1938, this Court, speaking through Mr. Justice Butler, outlined the previous history of the petitioner, Town of North Miami, as follows:

> "In 1926, **electors residing** in Dade County, Fla., **on the west side of Biscayne Bay, incorporated a town,** Miami Shores, now called North Miami. The boundaries specified by the incorporators included approximately 16 square miles, **14** of which were on the **west side** of the bay and had a population of 2,500. **Two** square miles were on the **east side** and had but **12 inhabitants.**
> . . .
>
> "Between January 1, 1927, and April 1, 1928, the town issued bonds, $238,000 of which are outstanding. In each bond the town pledged its faith and credit for payment and declared that provision had been made for the levy and collection, each year that the bond remained outstanding and unpaid, of sufficient taxes on all taxable property within its limits to pay principal and interest as they came due. . . . Proceeds of the bonds were used for the **construction of permanent improvements; the only part spent on the east side** was **$6,000** for mosquito eradication, **most** of which went for **equipment** which the **town still owns.**
>
> "In a quo warranto suit brought by the state on the relation of its Attorney General in August, 1929, and in a later suit brought by owners of east side lands to cancel tax certificates on their lands, the state Supreme Court held that the

statute relied on for creation of the municipality did not authorize inclusion of noncontiguous areas. Mahood v. State, 101 Fla. 1254, 133 So. 90; Leatherman v. Alta Cliff Co., 114 Fla. 305, 153 So. 845. And in those suits it was finally adjudged that the **east side** was not and never had been **a part of the incorporated town,** and that **the town** never acquired jurisdiction de jure or de facto **over the land east of the bay. A decree of ouster as to the east side land** was entered in December, 1931, and tax certificates on **lands on that side were canceled. . . .**

". . . And until prevented by the decree of ouster, the town exerted municipal authority on both sides of the bay within the boundaries defined by **west side electors acting to incorporate the town. . . .**"

The Court then held that:

"Mere inspection of the statute and the defined boundaries unmistakably shows that the **west side electors were without authority to incorporate the east side tract with that in which they resided.** . . . The town de facto could not derive from the consent of the east side owners jurisdiction that it de jure was without capacity to receive. . . . As the **east side lands** never became liable to be taxed **by the town** to pay its bonds, respondents were not entitled to restrain petitioners from defending against levy and collection of the taxes or to any relief in this suit."

Immediately after the decision of this Court in the **Ocean Beach Heights case,** the Town sought to resist a mandamus proceeding in the United States District Court, brought by F. M. Horigan, a holder of a judgment based on bonds of the Town, to require payment of funds on hand to apply upon the judgment.

In resisting the **Horigan suit,** the Town contended that the logical effect of the holding of this Court in the **Ocean Beach Heights case** was that the Town was non-existent, even as to the lands on the West side of the bay, as well as those on the East side, and that, therefore, the Town could not be compelled to pay the judgment which had been rendered against it on its bonds. This contention was upheld by the District Court, but reversed by the Fifth Circuit Court of Appeals, which held that the decision of this Court and the prior decisions of the Supreme Court of Florida had been misinterpreted by the Town and by the District Court, and that since the municipality on the West side of the bay had functioned steadily since 1926 and had been recognized by the Florida Legislature at almost every session as a corporation existing under the Laws of Florida, the Federal courts ought not to assume to annul it. The opinion is by Judge Sibley. The decision is reported as **United States ex rel. Horigan vs. Hayward, 98 Fed. 2nd, 433.**

In the spring of 1940, certain landowners on the West side of the bay, by a suit in the State court, sought to enjoin the taxation of their West side lands, on the ground that the Town of North Miami had no existence either de jure or de facto. The landowners contended that the general municipal incorporation statute under which the Town of North Miami had been incorporated was unconstitutional. They also contended that the proceedings attempting to incorporate two non-contiguous tracts of land, entirely separated by Biscayne Bay, under the general statute, was unauthorized and void, in toto. They further contended that the quo warranto judgment of ouster, ultimately rendered, pursuant to the mandate of the Supreme Court of Florida in the case of **Mahood vs. State ex rel. Davis, 101 Fla. 1254, 133 So. 90,** had ousted the municipal authority of the Town from the land West of Biscayne Bay, as well as from the land East of the bay. Their contentions were upheld by the lower state court.

However, the Supreme Court of the State of Florida, in an opinion by Justice Whitfield, considered each of

these contentions, and held that they were untenable, and reversed the decree of the lower court, with directions to dismiss the bill of complaint. The decision is reported as **Heyward vs. Hall, 144 Fla. 344, 198 So. 114.** The decision was rendered October 4th, 1940, and rehearing was denied October 30th, 1940.

A certified copy of the opinion was exhibited to the District Court when the instant case was heard on motion for summary judgment on November 18th, 1940 (R. 66).

In the opinion in the **Heyward vs. Hall** case, the Supreme Court of Florida said, "It clearly appears that **the Town of North Miami actually exists and its government is in operation** and **has been recognized by statutes and by judicial decrees and judgments** as having **legal existence** and **operation, at least as a de facto municipality** on the **West** side of Biscayne Bay, in Dade County, Florida." The entire court concurred in the opinion of Justice Whitfield. Justice Brown, concurring specially, stated that in his opinion the Town of North Miami became a municipal corporation de jure and has continued as such, saying:

> "In this respect, I go a bit further than Mr. Justice Whitfield, who in his opinion holds that the Town of Miami Shores, now North Miami, is at least a town de facto if indeed it is not one de jure."

The answer of the Town of North Miami in the present case shows that only $7,422.33 has been paid on the Brown-Crummer judgment of $11,790.00, entered June 19th, 1931 (now held by respondents), during the 10-year period since the judgment was entered (R. 2, 3, 13). The answer admits (R. 14) that only $2,006.44 has been paid on the H. T. East judgment of $7,214.46, entered July 30th, 1936, now held by respondents (R. 4). The answer admits (R. 14) that nothing whatever has been paid on the $129,010.45 Brown-Crummer judgment, entered July 1st, 1937, now held by respondents (R. 5, 6).

Although the Town has insisted to its creditors that it does not exist, for the purpose of paying its debts, since

the decision of this Court in the **Ocean Beach Heights case,** nevertheless the record in this cause shows that the Town has continued to function since that decision was announced, in 1938. It has operated its utilities, it has exercised police power, as a source of revenue, it has made up tax assessment rolls and levied and collected taxes, it has spent an average of $2,000.00 a month for operations and administrative expenses (R. 15 to 17).

The State Legislature has recognized the Town, as an existing corporate entity, at every legislative session since the Town was incorporated, in 1926, with the single exception of the 1939 session. In addition to the Acts of 1927 and 1929, set out in the appendix to the petition, the Legislature has passed a number of other legislative acts relating to the Town, which are set out in the appendix hereto. In fact, the 1941 Legislature, while this case was pending before the Circuit Court of Appeals, enacted a statute granting additional powers to the Town.

This Court, in the **Ocean Beach Heights case,** recognized the Town as an existing corporate entity. The Supreme Court of Florida, in the **Mahood case,** in the case of **Leatherman vs. Alta Cliff Co., 114 Fla. 305, 153 So. 845,** and in the case of **Town of North Miami, et al., vs. Travis Co., 118 Fla. 879, 160 So. 360,** has recognized and treated the Town as an existing corporate entity. In the case of **Heyward vs. Hall,** supra, the Supreme Court of Florida specifically held the Town to be an existing corporate entity.

The District Court, therefore, in the present case, refused to treat the Town as non-existent, and ordered it to levy taxes on the West-side property to pay the respondents' judgments previously entered against it. The Circuit Court of Appeals affirmed this action of the District Court.

ARGUMENT

Summary

I. The Circuit Court of Appeals' interpretation and application of the judgment of ouster entered by the Circuit Court of Dade County, Florida (**State ex rel. Landis vs. Mahood**), pursuant to the mandate of the Supreme Court of Florida in **Mahood vs. State ex rel. Davis, et al.**, is entirely correct. An analysis of the information and of the opinions of the Supreme Court of Florida in that case clearly demonstrates that the judgment did no more than oust the Town and its officials from exercising jurisdiction over the lands East of Biscayne Bay. The Supreme Court of Florida has expressly held that the judgment shows on its face that it did no more.

II. The holding of the Circuit Court of Appeals that there is a municipal corporation, at least defacto, if not de jure, West of Biscayne Bay, which may contract debts, be sued for them and be compelled to levy taxes to pay them, according to the laws of Florida governing municipal corporations, is entirely in accord with the applicable local decisions concerning this very petitioner, Town of North Miami. The Supreme Court of Florida has considered and rejected petitioner's present contention that the incorporation of the Town of North Miami in 1926 was void as to the lands on the West side of Biscayne Bay under the doctrine of the case of **Town of Enterprise vs. State, 29 Fla. 128, 10 So. 740.**

III. The holding of the Circuit Court of Appeals that there is a municipal corporation, at least de facto, on the West side of Biscayne Bay, which may and should be compelled to levy taxes to pay judgments based upon bonds issued by it, is based upon legal principles which have been expressly adjudicated by the Supreme Court of Florida, in litigation directly involving the Town of North Miami, and directed to this very issue. The holdings of the Supreme Court of Florida that the petitioner is a municipal corporation lying West of Biscayne Bay are

actual adjudications, and not, as petitioner argues, "mere obiter dicta." No matter how absurd petitioner may conceive these decisions of the Supreme Court of Florida to be, such decisions are binding on the Federal courts, under the principles announced in **Erie Railroad Company vs. Tompkins, 304 U. S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188,** and it would have been error if the Circuit Court of Appeals had departed from the Florida Supreme Court's interpretation of the municipal self-incorporation statute as applied to this very Town of North Miami. See **Moore vs. Illinois Central R. Co., 311 U. S. 643, 61 Sup. Ct. 754, ... L. Ed. ...**

The Circuit Court of Appeals' Interpretation and Application of the Judgment of Ouster Entered Pursuant to the Mandate of the Supreme Court of Florida is Correct.

The judgment of ouster appears at pages 28 to 31 of the record. The Circuit Court of Appeals, by holding that the judgment of ouster entered pursuant to the mandate of the Florida Supreme Court in the **Mahood case** "did not purport to nullify the municipality or oust its officers wholly, but only as to the part of the town east of the Bay" (R. 139), placed upon the judgment the only intelligent construction which could possibly be placed upon the language used in the judgment.

The record in the **Mahood case** does not support the construction which petitioner now seeks to place upon the language used in the judgment. It is true that the information filed by the State of Florida, through its Attorney General, in the Circuit Court of Dade County, Florida, in 1929, sought to oust the Town government as a whole, and alleged that the Town had never been organized according to law and was without legal existence (R.20). However, it should be noted that the information also alleged that there were not more than 10 registered voters living on the East side of the bay, and that at the time of the attempted incorporation the registered voters participating in the election and incorporation were all residents of the community on the West side of the bay (R. 25).

A judgment of ouster was entered on the pleadings, but this judgment was reversed by the Supreme Court of Florida in a decision reported as **Mahood vs. State ex rel. Davis, 101 Fla. 1254, 133 So. 90,** on the ground that the Town was entitled to a jury trial on the issue of whether or not the community existed, in whole or in part on the East side of the bay, as well as on the West side. Both the majority opinion of Mr. Justice Buford and the opinion of Mr. Justice Brown pointed out that there was no question but that the community or village existed on the West side of the bay.

In the meantime, Attorney General Davis was succeeded in office by Attorney General Landis, in whose name the cause was continued.

The trial was then held, and Judge A. V. Long, then a State Court Judge, directed a verdict against the Town (R. 28), and under date of December 18th, 1931, entered a judgment of ouster wherein the Town and its officials **were excluded and prohibited from exercising the offices, franchises and privileges of a municipality over or upon particularly described lands lying East of Biscayne Bay** (R. 28, 29).

The information alleged (R. 25) that at the time of the incorporation the registered voters participating in the election and incorporation were all residents West of the bay. The petitioner states, on page 12 of its brief, that the Town, by its answer, denied these allegations. The record shows that the jury found for the relator and co-relators. Under the law of the case, as established in the opinion of the Florida Supreme Court, pursuant to which the trial was being held, the jury must, therefore, have found that all of the incorporators were West-side residents.

In order to interpret the ouster judgment as absolutely abolishing the Town, and as holding its incorporation to be void in toto, it is necessary for the petitioner to quote only a portion of the judgment and ignore the remainder. The District Court and the Circuit Court of Appeals very

property refused to stultify themselves by reading only the first half of one of the sentences in the judgment, but considered the entire sentence in determining its meaning.

We do not belabor the point further, because the Supreme Court of Florida, in the case of **Heyward vs. Hall, 144 Fla. 344, 198 So. 114,** decided October 4th, 1940, has authoritatively interpreted this very ouster judgment.

The Court, in an opinion prepared by Justice Whitfield, at **page 118 of 198 So.,** said:

> **"The municipal authority of the Town was not ousted from the land west of Bay Biscayne in the Mahood case as claimed by appellees.** As shown by the record on file in this Court in E. B. Leatherman, et al., v. Alta Cliff Co., Ocean Beach Heights v. Brown-Crummer Inv. Co., Inc., supra, the quo warranto judgment referred to by counsel for all parties in this case as having been ultimately rendered December 18, 1931, by the Circuit Court pursuant to the mandate of this Court in the case of Mahood v. State, supra, is in part as follows:
>
> "'Ordered and adjudged by the Court, that the respondents Louis Nathan as Mayor, . . . of the Town of North Miami (formerly known as Town Miami Shores), and the Town of North Miami (formerly known as Town of Miami Shores) be and they each are hereby ousted, excluded and prohibited from exercising the offices, franchises and privileges of a municipality or municipal corporation, and of the Mayor . . . thereof, under the purported license, incorporation and/or charter of the Town of North Miami (formerly known as Town of Miami Shores), over or upon the following described lands, or any part thereof, to-wit:' (description of lands by metes and bounds).
>
> "'It is further ordered and adjudged by the court that the lands above described which consti-

tute all that portion of the purported Town of Miami Shores **East of Bay Biscayne,** and between said Bay Biscayne and the Atlantic Ocean are not, and never were legally incorporated in the Town of Miami Shores, now known as Town of North Miami and that **said lands** were never a part of the said purported Town and that their attempted inclusion therein was illegal, null and void and without warrant or authority of law.'

"Such judgment of ouster clearly was confined and limited to the lands on the east side of Bay Biscayne which were attempted to be included in the Town of Miami Shores, sought to be established in 1926 under Sec. 2935 (1825), et seq., C. G. L., by inhabitants of a **hamlet then existing on the west side of Bay Biscayne.** The judgment is now res adjudicata as to the lands on the **east** side of the Bay."

The opinion further says (text 117):

"Such judicial ouster of municipal jurisdiction of the Town of Miami Shores and of North Miami by name from the east side of the Bay was **judicial recognition of the continued existence of the Town as a municipality, at least de facto, on the west side of Bay Biscayne."**

Since the Supreme Court of Florida had held that the Town of North Miami still exists, on the West side of the bay, it follows that the lower Federal courts committed no error in not holding it to be non-existent, and in requiring the Town to levy and collect taxes from the property on the West side to pay judgments entered upon bonds previously issued by it.

The holding of the Circuit Court of Appeals is in accord with the applicable local decisions.

In the case of **Heyward vs. Hall, 144 Fla. 344, 198 So. 114,** text 116, the Supreme Court of Florida, speaking

through Justice Whitfield, considered petitioner's contention that the principle of the **Enterprise case** invalidates the municipal corporation, on the West side of the bay, as well as on the East side of the bay, and decisively disposed of this contention, saying:

> "The main contention in support of the decree of the Circuit Court is that the attempt of the inhabitants of a hamlet on the west side of Bay Biscayne in 1926 to establish a municipal government for themselves . . . was wholly void and ineffectual to give the Town a legal existence under the statute because described non-contiguous lands on the east side of the Bay as well as described lands on the west side of the Bay were included in the incorporation proceedings taken by the inhabitants under the general statute and that such inclusion of non-contiguous tracts of land, being unauthorized, rendered the incorporation proceedings null and void under the decision in Town of Enterprise v. State, 29 Fla. 128, 10 So. 740, and that consequently there can be no de jure or de facto Town of North Miami within the area described in the incorporation proceedings even on the west side of Bay Biscayne, where there was a hamlet at the time of the incorporation and now is a Town asserting municipal authority under the name of Town of North Miami.
>
> "The conclusion asserted is not justified for the reason that in the cited Town of Enterprise case the second attempt of the inhabitants of a hamlet or village to establish for themselves a municipal government under the general laws of the state **was abandoned**; . . . It is clear from the whole record in the Town of Enterprise case that the court had no purpose to decide and did not intend to adjudicate that the entire second proceedings were wholly void and could be of no legal effi-

> cacy whatever . . . There was of course no occasion in that case to consider the applicable law if there had been the exercise of de facto municipal authority over all or part of the described land, which presumably contained a hamlet or village in one of the non-contiguous tracts of land."

Mr. Justice Whitfield goes on to point out that, in North Miami, municipal authority has been exercised over the lands on the West side of the bay where there was and is a hamlet or village, which could have been incorporated by the inhabitants, under the general statutes, and that the municipality has been repeatedly recognized by the statutes of the State since 1927, "which in legal effect makes the village or town on the West side of the bay at least a de facto municipality."

The opinion further states that the Town of North Miami, on the West side of the bay, is "at least a de facto if not a de jure municipality with prescribed statutory jurisdiction and powers within the limits of incorporation. . . . For judicial recognition of the town of North Miami, see the Town of North Miami vs. Travis Co., 118 Fla. 879, 160 So. 360; Leatherman v. Alta Cliff Co., supra; Mahood v. State, supra; Ocean Beach Heights v. Brown-Crummer Investment Co., supra; (referring to the decision of the Supreme Court of the United States.) United States v. Heyward, supra."

On page 14 of its brief, petitioner erroneously states that in the **Mahood case,** the Supreme Court of Florida remanded the case for trial on the issue of whether the Town actually included two detached tracts of land. The Supreme Court of Florida specifically recognized the fact, which everybody knew, that the tracts of land were separated by Biscayne Bay, and the issue which the Supreme Court of Florida directed to be tried was whether or not the community which had been incorporated as a village was located on both sides of the bay or merely on the West side of the bay.

In the case of **Leatherman, et al., vs. Alta Cliff Company, et al., 114 Fla. 305, 153 So. 845,** the Supreme Court of Florida held that tax certificates issued by the Town of North Miami against the lands on the East side of the Bay were null and void and should be cancelled because of the effect of the ouster judgment entered pursuant to the opinion and mandate of the Supreme Court of Florida in the **Mahood case.** The Court specifically stated that:

> "When the village or hamlet was incorporated by the citizens, it became a de facto corporation only to the extent authorized by the legislative acts in this regard."

that is to say, West of the Bay.

In **Heyward vs. Hall,** supra, owners of lands West of the bay asked for injunctive relief identical with that which had been granted to the East-side landowners in the **Leatherman case.** This relief was denied, because the Supreme Court of Florida held that the Town **does exist West of the bay, at least** as a de facto corporation, in contradistinction to its decision in the **Leatherman** case that the Town did not exist **East** of the bay, **even** as a de facto corporation. The opinion of the Supreme Court, in the **Heyward vs. Hall** case, cannot be dismissed as mere obiter dicta, but must be regarded as deciding that the Town does exist, West of the bay.

The petitioner's attempt to construe the opinion of this Court in the **Ocean Beach Heights case** as an adjudication that the Town did not exist, on either side of the bay, requires the petitioner to seize upon one sentence in the opinion, and to ignore the rest of the opinion, which clearly demonstrates that this Court did not do more in that case than adjudge that the East side property could not be taxed by the Town.

The adjudication of this Court in the **Ocean Beach Heights case** is obviously an adjudication of the status of the East side lands only, since the West side lands were not in any way involved in the case.

Indeed, it is apparent that this Court denied the petition for rehearing filed by the then counsel for the Brown-Crummer Investment Company, which attempted to argue the status of the West side lands, because such argument was directed to matters which were not involved in the case and which were not properly presented for decision.

Petitioner attempts to distinguish the case of **Heyward vs. Hall,** supra, by stating that the judgment of ouster was not pleaded in that case. But the opinion of the Supreme Court of Florida shows that it was argued, considered and determined in that Court. If the Supreme Court of Florida had considered that the ouster judgment in the previous quo warranto proceeding had, in fact, ousted the Town, as a whole, the Court could not possibly have held that the proper remedy for the West-side landowners, if any, was the bringing of a second quo warranto proceeding.

Petitioner, on page 18 of its brief, argues that the original incorporation was participated in by voters of both the East and West sides of Biscayne Bay, and that, therefore, the decision of the Circuit Court of Appeals is erroneous. On page 4 of its brief, petitioner, in a footnote, asks this Court to take judicial notice of the record in the case of **Heyward vs. Hall, supra,** wherein the bill of complaint alleged that the inhabitants of both the East and West sides of Biscayne Bay participated in the incorporation. If this Court should take judicial notice of the record in **Heyward vs. Hall,** it will further find that the answer of the Town in that case admitted this allegation of the bill of complaint. However, the Supreme Court of Florida, notwithstanding this allegation and admission, held that the Town still exists on the West side of the bay. Therefore, the holding of the Circuit Court of Appeals is in complete harmony with the decision of the Supreme Court of Florida, even if the record in this case had shown that the East side inhabitants participated in the incorporation. The record in this case does not show this to be a fact, for the only reference in this record to

the participation of the East-side inhabitants appears at page 25 of the record, where the information in quo warranto, attached as an exhibit to petitioner's answer, alleges that the voters participating in the incorporation were all residents of the West side. On page 4 of the petition, a footnote relies upon the notice of the organizatoin meeting, contained in the **Ocean Beach Heights case** record, as establishing participation by East-side voters. This notice, which was posted before the meeting was held, could not possibly prove who actually appeared at the meeting, unless it be accepted as an infallible prophecy. The record of the incorporation proceedings, which appears in the Ocean Beach Heights transcript, does show that one Paul Prigg was elected alderman, but the Ocean Beach Heights record, as well as this record, is silent as to the place of residence of Paul Prigg, who is nowhere mentioned in the record in the instant case.

Regardless, however, of the factual basis for petitioner's often-repeated statement that inhabitants of both sides of the bay participated in the incorporation, it is apparent that the Supreme Court of Florida, in the **Heyward vs. Hall** case, with the statement before it, has definitely held that the Town still exists on the West side of the bay, and that the holding of the Circuit Court of Appeals in the present case is in complete harmony with the law as adjudicated by the Supreme Court of Florida, and that what petitioner actually seeks in this proceeding is a reversal of the case of **Heyward vs. Hall** by the Federal courts.

The holding of the Circuit Court of Appeals is based upon legal principles enunciated by the Supreme Court of Florida and not upon obiter dicta.

We have already pointed out that the decision of the Supreme Court of Florida in **Heyward vs. Hall,** supra, cannot be dismissed as obiter dicta, because while in the **Leatherman case** the Supreme Court of Florida had held that the East-side landowners were entitled to enjoin the issuance of tax deeds based upon tax sale certificates issued for taxes levied by the Town upon East-side lands, in

Heyward vs. Hall, the Supreme Court of Florida held that the west-side land-owners were not entitled to obtain such relief as to tax sale certificates issued for taxes levied by the Town against west-side lands. The basis for this decision was that the municipality still exists, at least as a de facto municipality, insofar as the west-side lands are concerned, and the basis for the **Leatherman** decision was that the Town did not exist, even as a de facto municipality, insofar as the east-side lands were concerned. Therefore, the Supreme Court of Florida's discussion in the case of **Heyward vs. Hall** of the de facto existence of the Town, on the West side, was not obiter dicta, but went directly to the heart of the controversy, and the reasons there given for the decision of the Court were an integral portion of the Court's opinion, just as the discussion of the **Enterprise** case was an integral portion of the Court's decision in the **Mahood** and **Leatherman cases** dealing with the East-side lands. Furthermore, the discussion in the **Heyward case** constituted no departure from the holding in the **Mahood** and **Leatherman cases,** but was entirely consistent with the opinions of the Court in the **Mahood** and **Leatherman cases.**

In its opinion in the **Mahood case,** which reversed the first ouster judgment, the Court treated the Town as admittedly existing on the West side of the bay, but held that the territory East of the bay could not be included within the corporate limits, by proceedings under the self-incorporation statute, taken by the inhabitants of the community located and existing entirely West of the bay.

In the **Leatherman case,** the Supreme Court of Florida stated that the municipality had never acquired any de facto or de jure jurisdiction over the lands East of the bay, because the incorporation statute did not contemplate that the inhabitants West of the bay might take unto themselves jurisdiction of the territory East of the bay, which was in no way a part or parcel of the hamlet or village sought to be incorporated, and the Court specifically pointed out that the village became a de facto corporation, to the extent authorized by the legislative acts in

this regard, that is to say, West of the bay, where the community was situated.

In the case of **Town of North Miami, et al., vs. Travis Co., 118 Fla. 879, 160 So. 360,** decided in 1935, subsequent to the decisions in the **Mahood** and **Leatherman cases,** and prior to the decision of this Court in the **Ocean Heights case** and the decision of the Supreme Court of Florida in the case of **Heyward vs. Hall,** the Travis Company brought a bill in equity to enjoin the Town from expending for operation purposes moneys which were being collected from taxes levied for debt service purposes. Certain paragraphs of the bill alleged that the Town was under a duty to appropriate sums for the payment of its bonds and to levy and collect taxes to raise such funds and to expend such funds so collected solely for the payment of its bonds. The Town moved to strike these paragraphs. The Circuit Court of Dade County, Florida, denied the Town's motion to strike. The Town then appealed to the Supreme Court of Florida, which affirmed the order, thereby squarely holding that the Town was under a duty to levy taxes for the payment of its bonds and to expend the proceeds thereof on such bond payments, and not for operation purposes, as the Town was in the habit of doing.

The Court, speaking through Mr. Justice Buford, at **page 361 of 160 So.,** said:

> "We deem it unnecessary to devote any space to discussing the question as to whether or not a duty rested upon the municipality to assess, levy and collect taxes to pay its bonded indebtedness which had been lawfully created and incurred. It can hardly be questioned that this duty exists and should be performed."

Petitioner argues, on page 22 of its brief, that the decision in the **Travis case** is not sufficient judicial recognition to establish a de facto municipality. It is obvious that the decision in the **Travis case** not only judicially recognized the existence of the municipality, but specifically held that this municipality was under a duty to levy

and collect taxes to pay its bonds, and that by no stretch of the imagination can this decision be construed as obiter dicta. On the contrary, it adjudicated a legal principle with regard to this very town, directly applicable to the issue now involved in the instant case, which issue is whether the District Court and the Circuit Court of Appeals committed error in holding that this Town of North Miami should levy and collect taxes to pay the judgments held by the respondents, based upon bonds which the Town had issued. Obviously, the lower Federal courts would have committed error if they had not followed the decisions of the Supreme Court of Florida holding that this Town of North Miami does exist, as a municipal corporation, on the West side of Biscayne Bay, and that it is under a duty to levy and collect taxes for the payment of its bonded indebtedness.

The case of **Heyward vs. Hall** is the latest in a series of cases in which the Florida Supreme Court has interpreted the municipal self-incorporation statute. The **Enterprise** case was an earlier case interpreting the statute and applying it to a particular set of circumstances. The case of **Heyward vs. Hall** is the most recent case in which the Florida Court has interpreted the statute. It deals specifically with the Town of North Miami. In **Moore vs. Illinois Central R. Co., 311 U. S. 643, 61 Sup. Ct. 754, -- L. Ed.** ...., it was held that the Circuit Courts of Appeals are bound by the interpretations placed upon State statutes by the state court of last resort.

The petitioner, in attacking the decision of the Florida Supreme Court in **Heyward vs. Hall,** dealing with the legislative recognition of the Town, discusses only Chapter 13,103, Acts of 1927, and Chapter 14,237, Acts of 1929, ignoring Chapter 15,347, Acts of 1931, Chapter 15,822, Acts of 1931, Chapter 15,823, Acts of 1931, Chapter 16,584, Acts of 1933, Chapter 17,616, Acts of 1935, Chapter 17,617, Acts of 1935, Chapter 17,618, Acts of 1935; Chapter 18,728, Acts of 1937, and Chapter 21,426, Acts of 1941, all enacted by the Florida Legislature, and set out in the appendix to this brief. These statutes, among other things, au-

thorize the Town and its officials to compromise and adjust taxes, and to adopt zoning laws, and to levy and collect occupational license taxes, change the name of the Town, change the fiscal year and the terms of the elected officers, and five of them, enacted in 1935, 1937, and 1941, specifically refer to North Miami as "a town . . . incorporated under the general laws" of Florida.

We do not discuss these statutes in further detail, because the Supreme Court of Florida, in the case of **Heyward vs. Hall,** has specifically held that they constiaute legislative recognition of the continued existence of the Town.

Petitioner has stated, as its fifth specification of error, in the petition, the proposition that the general improvement bond issue of January 1, 1927, was invalid because the amount of the issue is in excess of 10 per cent of the assessed value which was placed upon the real and personal property on the West side of the bay at the time the bonds were issued. Petitioner has not argued this specification of error in its brief, and has, therefore, evidently abandoned it. However, the 10 per cent limitation was one established by statute, and, therefore, under the repeated holdings of the Supreme Court of Florida, the statutory validation decree validating these bonds (R. 58) conclusively established the validity of the issue. The holding of the Circuit Court of Appeals was, therefore, in complete accord with the decisions of the Supreme Court of Florida on this question. See **Sparks vs. Ewing, 120 Fla. 520, 163 So. 112; Lee vs. Atlantic Coast Line Railroad Company, 141 Fla. 545, 194 So. 252; Richard vs. City of Fort Lauderdale, ... Fla. ...., 1 So. 2nd. 202,** Opinion filed March 11th, 1941.

Conclusion

Ever since the West-side landowners learned that the East-side landowners could not be compelled to pay the bonds which the Town had issued and sold and the proceeds of which had been used to install permanent improvements on the West side of the Bay, the Town and

its West-side inhabitants have sought to escape all responsibility for payment of the bonded debt which was incurred for the benefit of the West-side lands.

The Town has advanced the theory of its own non-existence only as against its creditors, however, for it continues to function as a going concern, operating public utilities, exercising police powers, electing officers, levying and collecting taxes for operating purposes, and exepending for purposes satisfactory to itself more than $2,000.00 a month, while maintaining that it does not exist, insofar as its creditors are concerned.

In order to maintain that contention in this Court, the petitioner is obliged to characterize as mere obiter dicta every decision of the State and Federal courts which conclusively demonstrate its position to be untenable.

Respondents are admitted to be the holders of three judgments, entered in the District Court, at different times, against the petitioner, Town of North Miami. It is conceded that the judgments are based upon bonds and interest coupons issued by the Town, and that the statutes under which the bonds and coupons were issued provided for the levy and collection of taxes for the payment of such bonds and coupons, and that the judgments have not been paid.

Respondents filed a complaint in the District Court praying that the Town be required to levy a special tax for the payment of these judgments. The Town filed an answer, containing two contentions. The first of these contentions was that the ouster judgment attached to the answer and made a part thereof had abolished the Town. A mere inspection of the ouster judgment shows that the ouster relates only to the lands East of Biscayne Bay and not to the lands which the respondents sought to have taxed. The second contention advanced by the Town was that the Town is too poor to pay its debts. But the Supreme Court of Florida has held, ever since the case of **Columbia County Commissioners vs. King, 13 Fla. 451,** decided 70 years ago, that poverty is no defense in a proceeding of this kind.

The respondents moved for a summary judgment requiring the levy of a tax upon the territory of the Town lying West of Biscayne Bay.

Thereupon, and before the motion for summary judgment was heard, the Town moved for leave to file an amendment to its answer, advancing as a further contention the position that certain of the bonds upon which respondents' judgments were based were invalid because issued in excess of a statutory debt limitation.

The District Judge gave due consideration to the allegations of the proposed amendment and found that the matters alleged presented no defense to the relief sought, because of the validation decree and because of the entry of the plaintiffs' several judgments. Leave to file the proposed amendment was accordingly denied.

It is submitted that, inasmuch as the pleadings, affidavits and admissions on file showed that there was no genuine issue as to any material fact, and that the plaintiffs were entitled to judgment as a matter of law, on principles adjudicated repeatedly, both by the Supreme Court of Florida and by the Federal courts, the District Court had no discretion to withhold the entry of judgment, and that the action of the Circuit Court of Appeals in affirming the judgment was without error.

Respectfully submitted,

D. C. HULL
ERSKINE W. LANDIS
FRANCIS P. WHITEHAIR
JOHN L. GRAHAM
J. COMPTON FRENCH
Counsel for Respondents.

APPENDIX

(Note: The numbered Sections in the first portion of this appendix are from the Compiled General Laws of Florida, 1927. The numbers enclosed in parentheses immediately after the numbers of the sections refer to the sections of the Revised General Statutes of 1920, wherein such statutes were embraced prior to the compilation of 1927. The parenthetical notes at the end of each section refer to the Chapter numbers under which the statutes were originally enacted.)

3001 (1891). Town valuation not to exceed State.—The city or town may make its own assessment of property for taxation, but the valuation of property by the municipality shall not exceed the last valuation thereof by the State for taxation. The total taxes levied upon any property by any municipal corporation in any one year shall not exceed one per cent upon such State valuation, but this provision is not to be so construed as to prevent the said corporation from levying sufficient tax to meet the payment of interest on its outstanding bonds, and to provide for the payment of the principal thereof when the same shall become due, or from levying such taxes for special purposes, or from making such special assessments of property as are in this Chapter specified. (Ch. 3477, Acts 1883, Sec. 2, Const. 1885.)

3009 (1899). Power to issue bonds.—The city or town council shall have power, with the approval of two-thirds of the registered voters of the city having the qualifications specified in the preceding section, and actually voting, to issue bonds bearing such rates of interest as may be deemed best by the council, not exceeding the legal rate of interest in this State, whenever it may be necessary for the purpose of building or repairing the public works of the city, the widening and extension of streets or parks, payment of existing indebtedness of the city, or any other municipal purpose. (Id. Sec. 6.)

3010 (1900). Issuance of bonds to be submitted to election.—Before any such bonds are issued, the question of issuing them, as well as the amount to be issued, shall be submitted to the electors of the city having the qualifications specified in said section, in such manner and after such public notice as may be deemed necessary by the city council; and should two-thirds of the votes actually cast by said electors be in favor of issuing the bonds and the amount proposed to be issued, in that event it shall be lawful for them to be issued, otherwise not. (Id. Sec. 7.)

3011 (1901). Issuing bonds; purposes authorized; limitation of amount; election.—Cities and towns may issue bonds for the purpose of building or repairing public buildings or waterworks of the city or town, widening or extending streets or parks, purchasing or establishing gas or electric light plants for the city or town, or for any other municipal purpose, to an amount not exceeding ten per cent of the assessed value of the real and personal property within its incorporated limits. But this limitation shall not operate to prevent the issue by any city or town of additional bonds which, with the existing bonded indebtedness, shall not exceed ten per cent of the assessed value of the real and personal property within its corporate limits: Provided, that no bonds shall be issued by any city or town until the question of issuing same shall have been decided in favor of such bond issue by an election held for that purpose in the manner now provided by law: Provided, this section shall not apply to cities and towns which have special charters from the Legislature. (Ch. 3476, Acts 1883, Sec. 5; Ch. 5465, Acts 1905 Sec. 1.)

3013 (1903). Tax for bonds.—It is hereby made the duty of the city council to assess and collect such taxes from the citizens and upon the property within the city, as shall be necessary for the payment of interest upon, as well as the final payment of said bonds: Provided, however, that all property shall be taxed upon the principle

established by State taxation. (Ch. 1688, Acts 1869, Sec. 20.)

3032. Bonds.—After the equalization, approval and confirmation of the levying of special assessments for street improvements, as hereinbefore provided by Section 3029, and as soon as a contract for said street improvement has been finally let, the governing authority of the municipality may, by resolution, issue bonds, pledging the full faith and credit of said municipality, to an amount not exceeding seventy per cent of the proportionate part of the cost of said street improvement to be paid by special assessment, and the estimated cost of said street improvement as stated in the resolution provided by Section 3024 shall be used as a basis of calculation in determining seventy per cent of the proportionate part of the cost of said street improvement to be paid by special assessment; such bonds shall be general obligations of the municipality issuing the same, and if special assessments be not imposed and collected in respect of the improvement in season to pay the principal and interest of said bonds the governing authority of the municipality shall levy and collect on all taxable property in the municipality a tax sufficient to pay such principal and interest as the same respectively become due and payable. All bonds issued under the provisions of this section shall be excluded from any limitation of bonded indebtedness prescribed by the charter of the municipality issuing the same, or by general law, and said bonds shall be issued upon the adoption of a resolution by the governing authority of the municipality providing for the issuing thereof, without submitting the question as to the issuance of said bonds to a vote of the electors of said municipality. (Ch. 9298, Acts of 1923, Sec. 11.)

3033. Further bonds. Funds.—After the levy of special assessments for street improvements stand confirmed, and after the completion and acceptance of said improvements by the governing authority of a municipality, the governing authority of said municipality may, by resolu-

tion, issue further bonds pledging the full faith and credit of the municipality to an amount not exceeding the unpaid assessments for said street improvements: Provided, however, if any bonds have been issued under the preceding section upon estimate of the cost of the improvement the bonds issued under the preceding section and the bonds issued under this section shall not in the aggregate exceed the amount of the unpaid assessments.

All special assessments levied and imposed in respect of the improvement under this and the preceding section, shall constitute a fund for the payment of the principal and interest of the bonds authorized by this and the preceding section, and in the event there be a failure to collect and receive the said special assessment in season to pay the principal and interest of said bonds, the municipality shall levy and collect on all taxable property in said municipality a tax sufficient to pay such principal and interest as the same respectively become due and payable.

All bonds issued under the provisions of this section shall be excluded from any limitation of bonded indebtedness prescribed by the charter of the municipality issuing the same, or by general law, and shall be issued in the same manner as provided for in the preceding section.

No bonds issued under this or the preceding section shall be held in any way to impair or invalidate any special assessment made under the provisions of this law. (Id. Sec. 12.)

CHAPTER 11,855—(NO. 50)

AN ACT to Authorize the Issuance of Refunding Bonds by Counties, Cities, Towns and Other Municipal Corporations and Taxing Districts, and to Provide for Their Payment.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. That the governing authority of any county, city, town, municipal corporation or taxing district of the State may by resolution authorize the issuance of refunding bonds for the purpose of refunding any bond, note, certificate of indebtedness or other obligation for the payment of which the credit of said county, city, town, municipal corporation or taxing district is pledged, at or prior to maturity in the manner provided in this Act.

Sec. 2. Said refunding bonds may be issued within three months prior to the date of maturity of the obligations proposed to be refunded, or if said outstanding obligations shall be callable, within three months prior to the callable date. Refunding bonds may be delivered under the provisions of this Act at any time regardless of the date of maturity or optional dates of the obligations refunded, upon the surrender by the holder of a like amount of the obligations refunded. All obligations refunded under the provisions of this Act shall be immediately canceled in such manner as the governing authority shall prescribe.

Sec. 3. Said refunding bonds may be in coupon or registered form, or may be coupon bonds with privilege of registration as to principal only or as to both principal and interest, under such terms and conditions as the governing authority may prescribe. The governing authority may designate a bank or trust company within the State of Florida to act as registrar for said bonds. All bonds issued hereunder shall mature in annual instalments of

not less than three per cent of the total amount thereof, beginning not more than three years after date and running not longer than twenty-five years after date. They shall bear interest at a rate not exceeding six per centum per annum, payable annually or semiannually, and shall be executed in such a manner as the governing authority shall determine. Said bonds may be sold at public or private sale, and said bonds shall not be sold for less than ninety-five per centum of their par value and accrued interest to date of delivery.

Sec. 4. All special assessments levied on account of any improvement to finance which the obligations so refunded were issued, upon collection shall be paid into the sinking fund for the payment of the refunding bonds, and the proceeds of said special assessments shall be used for no other purpose. For the payment of all bonds issued under the provisions of this Act, the full faith and credit of the county, city, town, municipal corporation or taxing district, shall be pledged, and there shall be levied annually upon all taxable property therein, a tax sufficient to provide for the payment of said bonds, and the interest thereon at maturity. All bonds issued hereunder for the purpose of refunding obligations which are excepted from any limitation of indebtedness, shall likewise be excluded in applying any limitation of indebtedness prescribed by any statute of the State or City or Town Charter.

Sec. 5. In the event refunding bonds are issued under the provisions of this Act prior to the date of maturity or option date of the obligations proposed to be refunded, the proceeds of said refunding bonds shall be deposited in a bank or trust company within the State of Florida, which depository shall give a surety bond, or other such bonds as are authorized by law to be accepted for securing County and City funds, satisfactory to the Comptroller of the State of Florida for the full amount of money so deposited and the funds so deposited shall only be withdrawn with the approval of the State Comptroller, for the

purpose of paying the obligations to refund which said bonds were issued.

Sec. 6. No proceedings shall be required for the issuance of bonds hereunder, except such as are prescribed by this Act, any provision of the general laws of the State of Florida or of any special Act or municipal charter applicable to the political subdivision issuing said bonds, to the contrary notwithstanding.

Sec. 7. This Act shall take effect upon its approval by the Governor, or upon its becoming a law without such approval.

Approved June 6, 1927.

CHAPTER 15,347, ACTS OF 1931—(No. 709)

AN ACT to Authorize the Town Council of the Town of Miami Shores to Compromise and Adjust Certain Taxes, Tax Sale Certificates and Assessment Liens, Either for Cash, or Bonds or Other Obligations of the Town, and to Validate, Ratify and Confirm Acts, Contracts and Obligations Thereof.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. The Town Council of the Town of Miami Shores is hereby authorized and empowered, during the period ending June 30th, 1933:

(a) To compromise and adjust, either for cash, bonds or other obligations owing by Town of Miami Shores, the whole or any part of any special assessment or special improvement lien held by said Town.

(b) To compromise and adjust, either for cash, or bonds or other obligations of the Town of Miami Shores, the whole or any portion of taxes which became delinquent prior to the year 1931, or tax sale certificates held by said Town of Miami Shores.

Section 2. Nothing in this Act shall be deemed to validate or confirm any acts, contracts or obligations which form the subject matter of pending litigation.

Section 3. If any section, or part of a section of this Act, proves to be invalid or unconstitutional, the same shall not invalidate or impair the valid force or effect of any other section or part of a section of this Act, unless it clearly appears that such other section or part of a section is wholly or necessarily dependent for its operation upon the section, or part of a section, so held to be unconstitutional or invalid.

Section 4. This Act shall take effect immediately upon its passage and approval by the Governor, or upon its becoming a law without his approval.

Approved June 15, 1931.

CHAPTER 15,822, ACTS OF 1931—(No. 104)

AN ACT to Authorize the Town Council of the Town of Miami Shores to Compromise and Adjust Certain Taxes, Tax Sale Certificates and Assessment Liens, Either for Cash or Bonds or Other Obligations of the Town, and to Validate, Ratify and Confirm Acts, Contracts and Other Obligations Thereof.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. The Town Council of Miami Shores is hereby authorized and empowered during the period ending June 30th, 1932:

(a) To compromise and adjust either for cash, bonds or other obligations owing the Town of Miami Shores the whole or any part of any special assessment or special improvement held by said Town prior to 1931.

(b) To compromise and adjust either for cash or bonds or other obligations of the Town of Miami Shores the whole or any portion of taxes which became delinquent

prior to the year 1931 or tax sale certificates held by said Town of Miami Shores for taxes in said Town prior to the year 1931.

Section 2. If any section, or part of a section of this Act, proves to be invalid or unconstitutional, the same shall not invalidate or impair the valid force or effect of any other section or part of a section of this Act, unless it clearly appears that such other section or part of a section is wholly or necessarily dependent for its operation upon the section, or part of a section, so held to be unconstitutional or invalid.

Section 3. This Act shall take effect immediately upon its passage and approval by the Governor, or upon its becoming a law without his approval.

Became a law without the Governor's approval.

CHAPTER 15,823, ACTS OF 1931—(No. 105)

AN ACT Changing the Name of the Municipality in Dade County Now Known as "Town of Miami Shores" to "North Miami," and Providing That This Act Shall Not Affect Any Pending Litigation, and Prohibiting the Use of the Name "Miami Shores" or Any Similar Name by Said Town or Other Municipality Comprising the Whole or Any Part of the Territory Over Which said Town Now Claims Jurisdiction.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. The name of the municipality in Dade County, Florida, designated in and pursuant to incorporation proceedings which are of record in Deed Book 920, pages 193 to 198, inclusive, in the office of the Circuit Court Clerk of Dade County, Florida, as "Town of Miami Shores," and known by said name, is hereby changed to "North Miami," by which last-mentioned name said Town shall henceforth be known and designated for all purposes.

Section 2. Nothing contained in this Act shall operate or be construed in any way to impair or affect the rights of any property owner or other party to any pending litigation or the merits or status of any pending litigation, although the name in or style of any action or suit in which said Town is a party may be amended to conform to the name of said Town as herein changed upon motion by either party after reasonable notice.

Section 3. That neither said Town hereinbefore designated, nor any municipal corporation hereafter created, comprising the whole or any part of the territory over which said Town now claims jurisdiction, shall ever adopt or use as its corporate name, or as a part thereof, the name "Miami Shores," or any similar name.

Section 4. All laws and parts of laws, in so far as the same conflict with or may be inconsistent with this Act, or any part hereof, are hereby repealed.

Section 5. Invalidity or failure to operate of any clause, sentence, phrase or other part of this Act, shall in no way or degree impair the validity or operation of any other clause, sentence, phrase or other part hereof.

Section 6. This Act shall take effect upon becoming a law.

Became law without the Governor's approval.

CHAPTER 16,584, ACTS OF 1933—(No. 727) HOUSE BILL NO. 1487

AN ACT to Change the Date of the Annual Election and the Period of the Fiscal Year of the Town of North Maimi and to Provide for the Levy and Assessment of Taxes Based on a Budget for a Period of Less Than One Year to Conform with the Proposed Changes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. That the period of the fiscal year and the terms of all elected officers for the Town of North Miami

shall begin on January 1st and end on the following December 31st of each year hereafter. The terms of the present elected officers to expire on December 31st of the year preceding that in which the terms would end under present town ordinances.

Section 2. That Town officials are hereby authorized to set the date of the annual election of officers on December 28th of each year, provided, however, that if the 28th shall fall on Sunday or a legal holiday the election be held on the 29th of December of each and every year.

Section 3. That the next annual budget shall cover the period from February 5th, 1934, to December 31st, 1934, and all other budgets shall be drawn in accordance with Section 1 of this Act and the millage, levying and assessing of taxes for the period of February 5th, 1934, to December 31st, 1934, shall conform to the budget so prepared for that period.

Became a law without the Governor's approval.

CHAPTER 17,616, ACTS OF 1935—(No.845) HOUSE BILL NO. 1173

AN ACT Authorizing "North Miami," a Town Located in Dade County, Florida, and Incorporated Under the General Laws of the State of Florida, to Abolish the Office of Marshal and to Create the Office of Chief of Police; and Providing for His Duties, Appointment, and Compensation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. That "North Miami" a town located in Dade County, Florida, and incorporated under the General Laws of Florida, be, and is hereby authorized and empowered to abolish, by ordinance, the elective office of Marshal, and to create the appointive office of Chief of Police.

Section 2. The Chief of Police shall be appointed by the Mayor, with the consent of the Council, and shall receive such compensation as shall be fixed by the Council. All legal or constitutional powers of the office of Marshal shall, upon the abolishment of said office and the creation of the office of Chief of Police, be considered as assigned to the office of Chief of Police, without further action by the Council.

Section 3. The provisions of this Act shall not be used to terminate or shorten the term of any City or Town Marshal now holding office.

Section 4. All laws, or provisions thereof, in conflict herewith are hereby repealed, in so far as said conflict would prevent the action herein contemplated.

Section 5. This Act shall take effect immediately upon its passage and approval by the Governor, or its becoming a law without such approval.

Became a law without the Governor's approval.

Filed in Office of Secretary of State May 30, 1935.

CHAPTER 17,617, ACTS OF 1935—(No. 846) HOUSE BILL NO. 1174

AN ACT to Authorize "North Miami," a Town in Dade County, Florida, and Incorporated Under the General Laws of the State of Florida, to Provide and Prescribe Zoning Regulations, and to Provide for a Planning Board and a Zoning Commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. That "North Miami," a Town Located in Dade County Florida, and incorporated under the General Laws of the State of Florida, may, in the interest of the public health, safety, convenience, comfort, prosperity or general welfare, adopt by ordinance, a plan or plans for the districting or zoning of the Town for the purpose of regulating trades, businesses, industries, bulkheads apart-

ment houses, hotels, dwellings, or other uses of real property or for the purpose of regulating the height of buildings or other structures, or for the purpose of regulating alignment of buildings or other structures near street frontages. The zoning regulations may be based upon one or more of the purposes above described. The Town may be divided into such number of zones or districts, and such districts may be of such shape and area as shall be best suited to accomplish the purposes of the zoning regulations. In the determination and establishment of districts and regulations classifications may be based on the nature or character of the trade, business, industry, profession or other activity conducted upon the premises, the number of persons, families or other group units to reside in or use buildings, the public, quasi-public or private nature of the use of the premises or upon any, other basis or bases relevant to the promotion of the public health, safety, order, morals, convenience, prosperity or welfare.

Section 2. No ordinance adopting zoning regulations as provided for in Section 1 hereof shall be passed by the Town of "North Miami" until after a comprehensive plan of the zoning of said Town shall have been prepared and submitted to the governing authority of said Town and to this end the Town of "North Miami" is authorized to designate and name a Planning Board or Zoning Commission to consist of not less than three nor more than five members to study and present a comprehensive plan for the zoning of said Town, the members of which Board or Commission to serve without compensation.

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

Section 4. This Act shall take effect immediately upon its passage and approval by the Governor, or its becoming a law without such approval.

Became a law without the Governor's approval.

Filed in Office Secretary of State, June 10, 1935.

CHAPTER 17,618, ACTS OF 1935—(No. 847)
HOUSE BILL NO. 1175

AN ACT Providing that "North Miami," a Town Located in Dade County, Florida, and Incorporated Under the General Laws of the State of Florida, May Abate Nuisances and Take Measures to Preserve The Public Health; and Assess the Cost Thereof Against the Property Where such Nuisances or Menace to Health Exists.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. That "North Miami," a Town located in Dade County, Florida, and incorporated under the General Laws of the State of Florida, having in accordance with the provisions of said General Laws adopted an ordinance or ordinances for the abatement of nuisances and the preservation of public health, may proceed to accomplish said abatement or preservation of public health in the manner and form set out in said General Laws; and the said Town be, and is hereby authorized to assess the costs thereof against the property where the said nuisance or menace to public health exists; provided, however, that the owner or owners of said land, if known, shall be given due notice that the said nuisance or menace to health exists, and shall be directed to abate same; and shall be given a reasonable time so to do.

Section 2. Costs assessed in accordance with the provision of Section 1 may be included in the annual levy for operation of the Town of "North Miami" and shall have the same priority and legal status as other items of the levy.

Section 3. This Act shall take effect immediately upon its passage and approval by the Governor, or its becoming a law without such approval.

Became a law without the Governor's approval.

Filed in Office Secretary of State June 10, 1935.

CHAPTER 18,728, ACTS OF 1937—(No. 1022)
HOUSE BILL NO. 1719

AN ACT Authorizing the Town of North Miami, Florida, a municipal Corporation, Organized and Existing Under and by Virtue of the General Laws of the State of Florida, to Provide by Ordinance for the Levy and Collection of an Occupational Tax From Each Person, Firm or Corporation Now engaged in or Who May Hereafter Engage in Any Occupation Subject to Taxation, to Provide a Penalty for the Violation Thereof, Repeal All Laws or Parts of Laws in Conflict therewith in so far as the Same Are Applicable to Said Town, and Declaring an Emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA: .

Section 1. That the Town of North Miami, Florida, a municipal corporation organized and existing under and by virtue of the General Laws of the State of Florida, be and it is hereby authorized by ordinance to levy and collect an occupational tax or license from all persons, firms and corporations now engaged in any taxable occupation or who may hereafter engage in such occupation an occupational tax or license. Provided, however that such occupational tax or license shall not be excessive or burdensome or contrary to the Constitutions of the United States of America and the State of Florida.

Section 2. All laws or parts of laws in conflict herewith, in so far as same are applicable to the said Town of North Miami, are hereby repealed.

Section 3. An emergency is hereby declared to exist for the passage of this Act.

Section 4. This Act shall take effect immediately upon its passage and approval by the Governor or its becoming law without his approval.

Approved by the Governor June 11, 1937.

Filed in Office Secretary of State June 12, 1937.

CHAPTER 21,426, ACTS OF 1941—(No. 1218)
HOUSE BILL NO. 1717

AN ACT Authorizing "North Miami" a town located in Dade County, Florida, and Incorporated under the general laws of the State of Florida, to Provide by ordinance that the Mayor, the Town Clerk and Treasurer, and the Assessor and Collector of Town taxes, shall hold office for a period of two years from the date of their election or until their Successors are elected and qualified.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. That "North Miami," a town located in Dade County, Florida, and Incorporated under the General Laws of Florida, be, and it is hereby authorized and empowered to provide by ordinance that the Mayor, the Town Clerk and Treasurer and the Assessor and Collector of Town taxes, shall continue in office for the period of two years from the date of their election or until their successors are elected and qualified.

Section 2. That this Act shall take effect upon the approval of a majority of the qualified electors of the Town of North Miami, Florida, voting at a special election.

Section 3. All laws, or provisions thereof, in conflict herewith are hereby repealed, insofar as said conflict would prevent the action herein contemplated.

Became a law without the Governor's approval.

Filed in Office Secretary of State, June 16, 1941.

STATE OF FLORIDA,
COUNTY OF VOLUSIA.

Bettye Mace, being duly sworn, says that she is employed in the law office of the legal firm of Hull, Landis & Whitehair, the members of which said firm are counsel for the respondents in this cause, and that on the 13th day of October, A. D. 1941, she mailed a true and complete copy of the above and foregoing brief to Mr. D. H. Redfearn, Counsel for the Petitioner, whose address is given below, said copy being enclosed in an envelope bearing the requisite amount of uncancelled United States postage stamps, by depositing said envelope, containing such copy and being properly sealed, stamped and addressed as given below, in the Postoffice at DeLand, Florida, and that the address on said envelope is the last known address of the counsel above named, said envelope being addressed as follows:

Mr. D. H. Redfearn,
1206-09 Alfred I. DuPont Building,
Miami, Florida.

Bettye Mace

Sworn to and subscribed before me this 13th day of October, A. D. 1941.

Elise Walters

Notary Public, State of Florida.
My commission expires Dec. 16, 1942